

UNITED STATES COURT OF APPEALS
Filed 8/16/96
TENTH CIRCUIT

G. GEORGE FINLEY, JR.,

Plaintiff-Appellant,

v.

COLORADO DEPARTMENT OF
CORRECTIONS, ARISTEDES W.
ZAVARAS, Executive Director;
RODERIC GOTTULA, M.D.;
JOSEPH MCGARRY, M.D.; LARRY
EMERY, STEVE QUACKENBUSH,
Physician's Assistant; Jane Doe, Nurse
known as Jean; John Doe Medical
Doctor; John Doe, Dentist; John Doe,
Male Nurse; Jane Doe, Nurse known
as Rose; Jane Doe, Nurse known as
Barbara; Jane Doe, Nurse known as
Margaret,

DefendantAppellees.

No. 95-1538
(D.C. No. 95-S-819)
(D. Colorado)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **KELLY** and **LUCERO**, Circuit Judges.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Mr. G. George Finley, Jr. filed this pro se action under 42 U.S.C. § 1983, alleging that the Colorado Department of Corrections and several state officials violated his Eighth and Fourteenth Amendment rights. The district court dismissed Mr. Finley's complaint pursuant to 28 U.S.C. 1915(d). Mr. Finley then filed this timely appeal.¹

The Eighth Amendment requires that Mr. Finley "allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). We have reviewed the record and Mr. Finley's assertions. While we are sympathetic to Mr. Finley's medical needs, we are not persuaded the district court erred.²

¹ The district court granted Mr. Finley's motion for leave to proceed *in forma pauperis* on appeal.

² We decline to consider the factual and legal issues Mr. Finley raises for the first time on appeal. See Oyler v. Allenbrand, 23 F.3d 292, 299 n.8 (10th Cir. 1994).

Accordingly, we AFFIRM substantially for the reasons given by the the district court.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Stephanie K. Seymour
Chief Judge